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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/169198

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 02, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on November 19, 2015, at Waukesha, Wisconsin.

The issue for determination is whether Waukesha County Health and Humans Services (the agency) correctly determined the Petitioner was overpaid \$712 in FoodShare benefits for the months of March and April 2014.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Kathy Jones, Economic Support Specialist  
Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.

2. On August 18, 2015, the agency sent the Petitioner and his wife a manual Notice of FoodShare Overissuance indicating they were overpaid \$712 in FoodShare benefits for the period of March and April 2014. (Exhibit 5)
3. The Petitioner filed a request for fair hearing that was received by the Division of hearings and Appeals on October 2, 2015. (Exhibit 1)

### DISCUSSION

The Federal regulation concerning FoodShare overpayments requires a State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). *7 Code of Federal Regulations (CFR) § 273.18(b)*, see also *FoodShare Wisconsin Handbook (FSH), Appendix 7.3.2*. Overpayments due to “client error” may be recovered for up to six years after discovery. *FSH, 7.3.2.1*.

Further, in an administrative hearing concerning the propriety of an overpayment the agency has the burden to prove that an overpayment took place. If the agency meets its initial burden of proof, the petitioner must then rebut the agency’s case and establish facts sufficient to overcome the evidence provided by the agency.

Here the Petitioner does not dispute the fact that he obtained employment with [REDACTED] in January 2014, nor does the Petitioner dispute the fact that an overpayment of benefits occurred in March and April 2014, in the amount of \$712.00, because the agency did not account for his income from that employer.

Petitioner appealed the overpayment because he does not think it is fair to hold him accountable for the overpayment, because he wasn’t aware of how to report the change and believes he did report the change via ACCESS in January 2014.

First, administrative law judges do not have the authority to make decisions based upon what a person thinks might be fair, but must instead make decisions based upon the law as it is written. “An administrative agency has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates. [citation omitted]” *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). “No proposition of law is better established than that administrative agencies have only such powers as are expressly granted to them or necessarily implied and any power sought to be exercised must be found within the four corners of the statute under which the agency proceeds.” *American Brass Co. v. State Board of Health*, 245 Wis. 440, 448 (1944); see also, *Neis v. Education Board of Randolph School*, 128 Wis.2d 309, 314, 381 N.W.2d 614 (Ct. App. 1985).

Second, the Petitioner testified that he knew he could report changes on-line using the ACCESS system. In addition, Petitioner was sent a notice in December 2013, that contained a phone number and fax number that could be used to “send proof or report changes”. (Exhibit 2) It was located in an outlined / highlighted box in the upper right hand corner of the first page. As such, Petitioner’s claim that he did not know how to report changes is without merit.

Third, there is no documentation in the record substantiating the Petitioner’s claim that he used ACCESS to report his new employment. Exhibit 11 is a set of case comments that spans January 2014 and there is no indication there, that the Petitioner filed a change report via the ACCESS system.

At the hearing, the Petitioner was clearly confused about what he reported to whom, because he assumed that if he reported the employment to the [REDACTED] ([REDACTED]) to end his unemployment insurance benefits (UIB) that he must have reported it to the agency. However, one must

log in to the [REDACTED] website to report changes affecting UIB claims. That is a separate system from ACCESS:

<https://access.wisconsin.gov/>

vs.

<https://dwd.wisconsin.gov/uiben/>

### **CONCLUSIONS OF LAW**

The agency correctly determined the Petitioner was overpaid \$712 in FoodShare benefits for the months of March and April 2014.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 24th day of November, 2015.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 24, 2015.

Waukesha County Health and Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability